

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

TYRONE BLOCKER,

Plaintiff,

v.

UNIVERSAL MUSIC PUBLISHING
GROUP,

Defendant.

No. 3:14-cv-01650-HU

**FINDINGS AND
RECOMMENDATION**

HUBEL, Magistrate Judge:

Plaintiff Tyrone Blocker ("Plaintiff") brings this action pro se against Defendant Universal Music Publishing ("Defendant"). Plaintiff refers to the operative pleading in this case as an "intellectual property complaint and business fraud." (Am. Compl. at 3.) In its entirety, Plaintiff's sole claim alleges the following: "[Defendant] fraudulently used my business and sold my intellectual property. See exhibits attached." (Am. Compl. at 3.)

The exhibits attached to the amended complaint appear to be: (1) an August 18, 2006 letter from the Internal Revenue Service addressed to Nest Coast LLC, in care of Tyrone Blocker, assigning

1 an employer identification number; (2) an internet printout from
2 the website www.bandmind.com, referring to Nest Coast Entertainment
3 in Portland, Oregon; and (3) an internet printout from the website
4 www.ambfibi.com, listing fourteen music royalty companies located
5 in the United States, including Nest Coast LLC, as well as a Google
6 map.

7 **LEGAL STANDARD**

8 It settled law that a district court must perform a
9 preliminary screening of an in forma pauperis complaint and dismiss
10 any claims which: (1) fail to state a claim on which relief may be
11 granted; (2) are frivolous or malicious; or (3) seeks monetary
12 relief against a defendant who is immune from such relief. 28
13 U.S.C. § 1915(e)(2)(B); see also *Lopez v. Smith*, 203 F.3d 1122,
14 1129 (9th Cir. 2000) (concluding that § 1915(e)(2)(B) applies to
15 non-prisoners).

16 In order to state a claim for relief, a complaint must contain
17 "a short and plain statement of the claim showing that the pleader
18 is entitled to relief." FED. R. CIV. P. 8(a)(2). When reviewing
19 the sufficiency of a complaint filed by a pro se litigant, the
20 court must liberally construe the pleading and accept as true all
21 of the factual allegations contained therein. *Erickson v. Pardus*,
22 551 U.S. 89, 94 (2007). But "the tenet that a court must accept as
23 true all of the allegations contained in a complaint is
24 inapplicable to legal conclusions," *Ashcroft v. Iqbal*, 556 U.S.
25 662, 678 (2009), and "[t]hreadbare recitals of the elements of a
26 cause of action, supported by mere conclusory statements, do not
27 suffice." *Id.* Rather, stating a claim requires "the plaintiff
28 [to] plead[] factual content that allows the court to draw the

1 reasonable inference that the defendant is liable for the
2 misconduct alleged." *Id.*

3 Along similar lines, a district court may dismiss a claim as
4 factually frivolous when the facts alleged "lack[] an arguable
5 basis in law or in fact," *Neitzke v. Williams*, 490 U.S. 319, 325
6 (1989), or when they "rise to the level of the irrational or the
7 wholly incredible, whether or not there are judicially noticeable
8 facts available to contradict them," *Denton v. Hernandez*, 504 U.S.
9 25, 33 (1992). A claim may also "be dismissed as frivolous where
10 a defense is obvious on the face of the complaint." *Harris v.*
11 *Rodriguez*, No. 1:12-cv-00891, 2012 WL 4210118, at *4 (E.D. Cal.
12 Sept. 18, 2012) (citing *Franklin v. Murphy*, 745 F.2d 1221, 1228-29
13 (9th Cir. 1984)).

14 RECOMMENDED DISPOSITION

15 Plaintiff's application (Docket No. 1) to proceed in forma
16 pauperis is granted solely for the purpose of screening his amended
17 complaint. Even when construing Plaintiff's allegations with the
18 liberality required under Ninth Circuit case law, they fall well
19 short of stating a plausible claim for relief. Indeed, Plaintiff's
20 amended complaint only contains a single conclusory statement that
21 "[Defendant] fraudulently used [his] business and sold [his]
22 intellectual property," and Plaintiff's exhibits fail to shed any
23 light on the basis for his cause of action against Defendant.
24 Accordingly, Plaintiff's amended complaint should be dismissed with
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1 thirty (30) days leave to replead and cure the deficiencies
2 described above.

3 **SCHEDULING ORDER**

4 The Findings and Recommendation will be referred to a district
5 judge. Objections, if any, are due **December 19, 2014**. If no
6 objections are filed, then the Findings and Recommendation will go
7 under advisement on that date. If objections are filed, then a
8 response is due **January 5, 2015**. When the response is due or
9 filed, whichever date is earlier, the Findings and Recommendation
10 will go under advisement.

11 Dated this 1st day of December, 2014.

12 /s/ Dennis J. Hubel

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14 DENNIS J. HUBEL
15 United States Magistrate Judge
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